BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
DEL MAR UNION SCHOOL DISTRICT,	OAH CASE NO. 2013110851
v.	ORDER PARTIALLY GRANTING STUDENT'S NOTICE OF INSUFFICIENCY
PARENT ON BEHALF OF STUDENT.	

On November 25, 2013, Del Mar Union School District (District) filed a Due Process Hearing Request (complaint) naming Student. On November 27, 2013, Student's attorney timely filed a Notice of Insufficiency (NOI) on Student's behalf. For the reasons discussed below, the NOI is partially granted as to Issues 2(c) and 2(d).

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[1] The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.[2] These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[3]

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[1] 20 U.S.C. § 1415(b) & (c).

[2] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[3] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[4] The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6]

DISCUSSION

District's complaint appropriately identifies Student, her eligibility category, and her name, age, address, and school. District alleges that it convened an individualized education program (IEP) meeting for Student on June 10, 2013; Student's father attended the meeting and participated; the team considered and discussed the results of triennial assessments of Student; it developed goals and objectives in numerous areas of need; and it offered placement in a general education classroom with specialized academic instruction, and designated instructional services in the areas of occupational therapy, behavior intervention, counseling, and adapted physical education. District alleges that Parent did not consent to the IEP at the meeting; that over the summer and during the early fall District exchanged correspondence with Parents' attorney regarding changes to the IEP; that the IEP team reconvened on November 1, 2013 to discuss Parents' concerns; that changes were made to the IEP; and that Parents did not consent to the revised IEP.

Issue One seeks a finding that the June 10, 2013 IEP, as revised on November 1, 2013, constitutes a FAPE in the least restrictive environment. Issue one is supported by the facts alleged in the complaint, as described above, and is sufficiently pled to put Student on notice of the nature of the claim to respond to the complaint and prepare for and participate in mediation and hearing.

Issue Two is framed as five sub-issues, all of which seek findings, as a proposed resolution, that District procedurally complied with various requirements of the IDEA and therefore District did not deny Student a FAPE.

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[4] Sen. Rep. No. 108-185, *supra*, at p. 34.

[5] *Alexandra R. v. Brookline School Dist*. (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

[6] Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Issue 2(a) alleges that District did not deny Student a FAPE by failing to ensure Student's parent the right to provide information to the IEP team in person or through a representative and the right to participate in meetings. While this issue does not specifically identify dates, in the context of the facts alleged, one can infer that this issue pertains to the time frame pertaining to the June 10, 2013 IEP and thereafter. The complaint alleges that Parent attended the June 10 and November 1, 2013 IEP meetings, that District communicated with Student's counsel during summer and fall 2013 regarding Parents' concerns and requests, and that the November 1, 2013 IEP meeting was scheduled at the convenience of Parents and their counsel. Issue 2(a) is sufficiently pled to put Student on notice of the nature of the claim and to prepare for mediation and hearing.

Issue 2(b) seeks a finding that District did not deny Student a FAPE by failing to implement June 10, 2013 IEP. District alleges that Parents did not consent to the June 10, 2013 IEP or the revisions offered to the IEP on November 1, 2013. One can infer from the facts that District did not implement the June 10, 2013 IEP as revised in its entirety. Therefore, Issue 2(b) is sufficiently pled to put Student on notice of the nature of the claim and to prepare for mediation and hearing.

Issue 2(c) seeks a finding that District did not deny Student a FAPE by failing to implement an August 24, 2012 IEP. However, District's complaint does not allege any facts pertaining to an August 24, 2012 IEP, or any facts that predate the June 10, 2013 IEP. Accordingly, Issue 2(c) is insufficient and District will be given leave to amend.

Issue 2(d) seeks a finding that District did not deny Student a FAPE by failing to provide credentialed substitute teachers. The complaint alleges no facts that support this issue, including whether Parents raised an objection to substitute teachers as it related to Student, when the objection was raised, what the objection was, when substitute teachers were used and whether those substitute teachers were or were not credentialed. Accordingly, Issue 2(d) is insufficient and District will be given leave to amend.

Issue 2(e) seeks a finding that District did not deny Student a FAPE by failing to adhere to the IEP team meeting notification requirements. District does not specifically allege how it gave Parents notice of the June 10, 2013 IEP meeting. However, it alleges that Parent attended and participated in the June 10, 2013 meeting, and that the November 1, 2013 meeting was scheduled to accommodate the convenience of the Parents and/or their attorney. Therefore, when read in the context of the facts alleged in the complaint, Issue 2(e) states sufficient facts to put Student on notice of the issue to respond to the complaint and prepare for and participate in mediation and hearing.

ORDER

1. Issues 1, 2(a), 2(b) and 2(e) of District's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 2(c) and 2(d) of District's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

3. District shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[7]

4. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If District fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 2(a), 2(b) and 2(e) in District's complaint.

6. All hearing dates previously set are confirmed, unless otherwise ordered.

Dated: December 3, 2013

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

[7] The filing of an amended complaint will restart the applicable timelines for a due process hearing.